

Message Text

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TO SECSTATE WASHDC 2370

INFO AMEMBASSY BONN

UNCLAS USUN 0385

E.O. 11652: N/A

TAGS: PFOR, GW

SUBJECT: REFUSAL OF NEW YORK TAX AUTHORITIES TO GRANT TAX

EXEMPTION TO MEMBER OF FRG MISSION UNDER PL-291

SUMMARY - TAX APPEALS BUREAU OF STATE OF NEW YORK DEPARTMENT OF TAXATION AND FINANCE HAS DENIED APPLICATION BY MEMBER OF FRG MISSION FOR SALES TAX REFUND ON CAR IMPORTED FROM WEST GERMANY IN CONNECTION WITH SUBJECT'S ARRIVAL TO ASSUME HIS DUTIES WITH FRG MISSION IN NEW YORK. SUCH DECISION COULD SET UNFAVORABLE PRECEDENT IN FUTURE CASES. DEPARTMENT'S VIEWS AND INSTRUCTIONS ARE REQUESTED.

1. WILFRIED BROENSTRUP, A CYPHER OFFICER WITH FRG MISSION, ENTERED U.S. ON JUNE 4, 1974 TO ASSUME HIS DUTIES. HE HAD ORDERED A NEW MERCEDEZ-BENZ SEDAN IN GERMANY IN MAY, 1974, PRIOR TO HIS DEPARTURE FOR U.S. HE SENT A DEPOSIT PAYMENT ON JULY 5, 1974 AND TRANSMITTED BALANCE OF PURCHASE PRICE IN OCTOBER 1974. CAR ARRIVED IN NEW YORK IN NOVEMBER 1974. ACCORDING TO BROENSTRUP HE WOULD HAVE TAKEN DELIVERY OF CAR MUCH EARLIER, BUT CAR WAS NOT AVAILABLE FROM FACTORY.

2. ON NOVEMBER 15, 1974, BROENSTRUP SOUGHT TO OBTAIN LICENSE PLATES. TAX DEPARTMENT INSISTED HE PAY TAX OF \$288.99 BEFORE LICENSE PLATES COULD BE ISSUED. HE DID SO, UNDER PROTEST, SINCE HE WAS LEAVING FOR CANADA AND NEEDED UNCLASSIFIED

UNCLASSIFIED

PAGE 02 USUN N 00385 101908Z

PLATES IMMEDIATELY. ON DECEMBER 5, 1974, BROENSTRUP FILED A CLAIM FOR REFUND, CITING PL-291-79TH CONGRESS.

3. AFTER MANY TALKS, COMMUNICATIONS AND A SMALL CLAIMS HEARING AT OFFICES OF STATE TAX COMMISSION, TAX APPEALS BUREAU DENIED REFUND ON GROUNDS THAT (1) BROENSTRUP DID NOT OWN AUTO WHEN HE ARRIVED IN U.S.; (2) THAT AS AN EMPLOYEE

OF A MISSION TO U.N. HE WAS NOT EXEMPT FROM PAYMENT OF SALES TAX UNDER SECTION 1116 OF SALES TAX LAW, AND THAT (3) SINCE HE HAD PERMANENT PLACE OF ABOODE IN NEW YORK STATE HE WAS NOT EXEMPT FROM SALES TAX UNDER SECTION 1117 OF SALES TAX LAW.

4. CHIEF ADMINISTRATIVE OFFICER OF FRG MISSION HAS WRITTEN USUN AND INFORMED US THAT FRG MISSION CANNOT ACCEPT CONCLUSIONS OF STATE TAX COMMISSION. HE STATES QUESTION AS TO WHETHER EMPLOYEES OF FRG FOREIGN SERVICE CAN IMPORT THEIR PRIVATE CARS ON FIRST ENTRY INTO U.S. FREE OF SALES TAX IS OF A PRINCIPLE NATURE, AND IF IT NOT RESOLVED SATISFACTORILY MIGHT NEED TO BE REFERRED TO HIGHER LEVEL.

5. WE HAVE ENDEAVORED TO ASSIST FRG MISSION THROUGHOUT ENTIRE EXERCISE, AND BELIEVE BROENSTRUP IS ENTITLED TO TAX EXEMPTION. IF STATE OF NEW YORK IS SUCCESSFUL IN THIS CASE, A PRECEDENT MAY BE SET, WHICH MIGHT LEAD TO GENERAL REQUIREMENT THAT ALL MISSION STAFF MEMBERS PAY NEW YORK STATE USE TAX ON CARS IMPORTED IN CONNECTION WITH THEIR ARRIVAL IN U.S. IN OUR VIEW IT IS IMPORTANT THAT APPEAL OF DECISION BE MADE, AND THAT DEPARTMENT SHOULD CONSIDER MAKING WHATEVER SUBMISSION IS APPROPRIATE IN SUPPORT OF BROENSTRUP'S REQUEST FOR REFUND.

6. A COPY OF ENTIRE FILE ON CASE HAS BEEN FORWARDED TO IO/UNP - LOUIS R. HAGE.

UNCLASSIFIED

UNCLASSIFIED

PAGE 03 USUN N 00385 101908Z

7. SINCE AN APPEAL OF TAX APPEAL BUREAU'S DECISION MUST BE MADE NO LATER THAN APRIL 10, 1977, DEPARTMENT'S VIEWS AND INSTRUCTIONS ARE REQUESTED AT EARLIEST TIME.

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